

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

TIMTU WOLDEMARIAM, PARENT and
GUARDIAN OF E.K., and E.K., A Disabled
Student,

Plaintiffs,

v.

SEATTLE SCHOOL DISTRICT,
A Washington Municipal Corporation,
Defendant.

No.

**COMPLAINT FOR
RECOVERY OF
ATTORNEY FEES AND
COSTS**

I. INTRODUCTION

Plaintiff E.K. is a disabled student eligible for special education under the Individuals with Disabilities Education Act, 42 U.S.C. § 1401 *et seq.* (IDEA). E.K. is a 19-year-old student who is autistic and non-verbal. E.K. is enrolled in the Seattle School District (the District). Plaintiff Timtu Woldemariam, E.K.'s parent and guardian, alleged that the District's systematic exclusion of E.K. and the physical abuse he sustained at school denied him the free and appropriate public education (FAPE) to which he is entitled under the IDEA.

1 Ms. Woldemariam filed a request for a Due Process Hearing. The hearing was
2 scheduled to commence on November 29, 2018. On November 16, 2017, the Seattle School
3 District made an Offer of Settlement to Ms. Woldemariam. On November 21, 2017, Ms.
4 Woldemariam accepted the District's Offer of Settlement. The offer included a monetary
5 amount plus reasonable attorney fees to be awarded by a court. The Administrative Law Judge
6 issued a final order in which good cause was found to dismiss the proceeding based on the
7 settlement of the parties. As the prevailing party in the IDEA administrative action, the parent
8 requests the School District pay attorney fees and costs consistent with its Offer of Settlement.
9 This action is initiated under the IDEA, 20 U.S.C. § 1415(i)(3)(B) and *McSomebodies v. San*
10 *Mateo City School District*, 886 F.2d 1559, 1560 (9th Cir. 1989), which authorizes such actions
11 for the sole purpose of enforcing the right of prevailing parents to attorney fees and costs.
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13 II. PARTIES

14 2.1 Plaintiff Timtu Woldemariam is the parent and guardian of E.K., a disabled
15 student. Plaintiffs are residents of King County, Washington.

16 2.2 Defendant Seattle School District is a Washington Municipal Corporation
17 located in Seattle, Washington.
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19 III. JURISDICTION AND VENUE

20 3.1 Plaintiffs' claims arise under the Individual with Disabilities Education Act
21 (IDEA), 20 U.S.C. § 1415(i)(3)(B). This Court has jurisdiction pursuant to 20 U.S.C. §
22 1415(i)(3)(A) and 28 U.S.C. § 1331.
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1 3.2 The District is subject to the provisions of the IDEA because it has received
2 and is receiving federal funds under the IDEA for the purpose of providing each disabled child
3 within its boundaries FAPE.

4 3.3 All acts and omissions at issue occurred or failed to occur in the Western
5 District of Washington.

6 **IV. FACTUAL ALLEGATIONS**

7 4.1 E.K. is an individual with a disability under the IDEA, 20 U.S.C. § 1401 (3)
8 and regulations promulgated pursuant to it at 34 C.F.R. 300 *et seq.* At all times relevant to this
9 action E.K. was eligible for special education and related services under the IDEA under the
10 category of developmental delay.
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12 4.2 E.K. resides with Timtu Woldemariam, his parent, inside the boundaries of the
13 Seattle School District. He attends school in Seattle School District at Cleveland High School.

14 4.3 E.K. is a 19-year-old non-verbal autistic student.

15 4.4 E.K. is in what is known as a “life-skills” class for severely disabled high school
16 students.
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18 4.5 E.K. has an Individualized Education Plan (IEP) that is prepared by the IEP
19 team, which includes the classroom teacher, the parent, a general education teacher, an
20 administrator, and ancillary service providers.

21 4.6 E.K. had the same classroom teacher from the time he entered Cleveland High
22 School until February 3, 2017.
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1 4.7 In March 2018, Ms. Woldemariam initiated a request for a Due Process Hearing
2 under the IDEA, 20 U.S.C. § 1415(f), (h), and (i) alleging that the District violated the IDEA
3 by denying E.K. FAPE by excluding him from school and physically and verbally abusing him.

4 4.8 E.K. alleged in his request for a Due Process Hearing that the teacher he had
5 until February 3, 2017 demanded the parent take E.K. home early from class two to three times
6 per week. E.K. alleged the exclusion from school occurred regularly and that the District had
7 notice of the exclusion and failed to prohibit the exclusion.

8 4.9 E.K.'s May 2016 Behavioral Intervention Plan states that if E.K. engages in
9 "target behavior," he will be sent home early that day or excluded from school the next day.
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11 4.10 E.K. alleged in his request for a Due Process Hearing that he frequently came
12 home from school until February 3, 2017 with bruises and torn clothing. He also included that
13 when Ms. Woldemariam inquired about the bruises and torn clothes, E.K.'s teacher would
14 threaten to contact state authorities and complain about Ms. Woldemariam, who is an
15 immigrant from Ethiopia and not a fluent English speaker.

16 4.11 It is undisputed that E.K.'s teacher violently assaulted him on February 3, 2017
17 in the presence of Instructional Assistants and other students. The District placed the teacher
18 on Administrative Leave and contacted the Seattle Police Department. The teacher resigned
19 from her teaching position several months later.
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21 4.12 The Due Process Hearing was scheduled to commence on November 29, 2017.
22 It was anticipated the hearing would take at least four days.
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4.13 The District made an Offer of Settlement to Ms. Woldemariam on November 16, 2018. She accepted the offer, which included a provision for the recovery of reasonable attorney fees to be determined by a court.

4.14 The final Due Process order entered by the Administrative Law Judge on December 12, 2018 incorporated the settlement agreement of the parties and found that there was good cause to dismiss the Due Process Hearing with prejudice.

V. CLAIMS FOR RELIEF

5.1 Plaintiffs hereby reallege the substance of sections I, II, III, and IV by this reference incorporates them herein.

5.2 The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1402 *et seq.*, requires that school districts provide eligible students with FAPE including special education and related services.

5.3 Plaintiffs E.K. and Ms. Woldemariam are the prevailing parties. A prevailing party may be awarded attorney fees and costs under the IDEA and conforming federal and state special education regulations. 42 U.S.C. § 1415(i)(3)(B); 34 C.F.R. § 300.517; WAC 392-172A-05120. The District's Offer of Settlement includes a provision for reasonable attorney fees and costs consistent with 42 U.S.C. § 1415(i)(3)(B); 34 C.F.R. § 300.517; WAC 392-172A-05120.

VI. PRAYER FOR RELIEF

6.1 Plaintiffs hereby reallege the substance of sections I, II, III, IV, and V by this reference incorporates them herein.

6.2 Plaintiffs Timtu Woldemariam and E.K. request the following relief:

- a. That this Court assume jurisdiction of this action;
- b. That this Court enforce the settlement agreement between the parties;
- c. That this Court award Plaintiffs their reasonable attorney fees and costs as the prevailing party in the administrative proceeding and incurred pursuing this action to enforce her right to an award of fees and costs pursuant to 20 U.S.C § 1415(i)(3)(B); 34 C.F.R. § 300.517; WAC 392-172A-05120 and 42 U.S.C. § 1988.

Dated this 18th day of December 2018.

s/ Susan B. Mindenbergs

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